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STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2008-

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF ENCROACHMENT
PERMIT NO. 18159-2, NATOMAS CROSS CHANNEL PHASE II IMPROVEMENTS,
SACRAMENTO AREA FLOOD CONTROL AGENCY, SUTTER COUNTY

WHEREAS, the Sacramento Area Flood Control Agency (“SAFCA”) has begun a multi-year Natomas Levee Improvement Program; and

WHEREAS, SAFCA as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* (“CEQA”) prepared an Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (“EIR”) (incorporated herein by reference and available at the Central Valley Flood Protection Board offices or SAFCA offices); and

WHEREAS, SAFCA, as lead agency, certified the EIR, adopted a Mitigation Monitoring Reporting Plan (“MMRP”) (incorporated herein by reference and available at the Central Valley Flood Protection Board or at SAFCA), issued findings pursuant to CEQA and the CEQA Guidelines (incorporated herein by reference); and approved the Project as identified in Alternative 1 of the EIR; and

WHEREAS, SAFCA submitted Application No. 18159-2 to the Reclamation Board on November 2, 2007. This is the follow on project to Application No. 18159-1, approved by the Reclamation Board on August 7, 2007. The application proposes to place landside fill to raise approximately 5.3 miles of project levee, to place waterside fill to realign approximately 0.9 miles (of the total 5.3 miles) of levee, and to construct approximately 4.3 miles of seepage cutoff wall in the levee.

WHEREAS, on December 21, 2007, the Reclamation Board heard presentations by its staff, SAFCA, and interested persons and the public regarding the proposed application, and approved sending a letter to the U.S. Army Corps of Engineers (“USACE”) requesting permission to modify a federal levee, and deferred action on the requested permit until a subsequent meeting; and

WHEREAS, On January 1, 2008, the new Central Valley Flood Protection Board came into being, and succeeded to all of the responsibilities of the former Reclamation Board; and

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing and has reviewed the application, the Reports of its staff, the documents and correspondence in its file, and the environmental documents prepared by SAFCA;

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NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact.

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report under the headings “Project Description (Item 10 only),” “Natomas Levee Improvement Program History,” “Construction Drawings and Specifications,” “Local Agency Endorsement for Draft Permit,” “DWR Early Implementation Program Comments,” “U.S. Army Corps of Engineers Comments for Draft Permit,” “Hydraulic Analysis and Impacts.” and “CEQA Compliance.”

2. The Board has reviewed the Figures, Attachments, and References listed on page 20 of the Staff Report.

CEQA Findings.

3. The Central Valley Flood Protection Board, as a responsible agency, has independently reviewed the analysis in the EIR, MMRP, and the findings prepared by the lead agency, SAFCA, and has reached its own conclusions regarding them.

4. The Central Valley Flood Protection Board, after consideration of the EIR, MMRP and SAFCA findings, adopts the project description, analysis and findings in the EIR, MMRP and SAFCA Findings which are relevant to activities authorized by issuance of a final encroachment permit consistent with Draft Permit No. 18159-2, the Natomas Cross Canal Phase II Improvements. The Board recognizes that the SAFCA documents are presently being challenged in litigation. However, CEQA Guideline Section 15231 provides: “A final EIR prepared by a lead agency . . . shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted . . . unless one of the following conditions occurs: (a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or (b) A subsequent EIR is made necessary by Section 15162 of these guidelines. The Board finds and concludes that the circumstances requiring a subsequent EIR are not present.”

5. The EIR concluded that Impact 3.4-a, Hydraulic Effects of the Proposed Levee Improvements, would be less than significant and that mitigation is not required. Based on attachment 6 of the Staff Report and the “Hydraulic Analysis and Impacts” section of the Staff Report, the Board concurs that the impact is not significant.

6. **Findings regarding significant impacts.** Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Central Valley Flood Protection Board determines that the SAFCA Findings, attached to the Staff Report as Reference 3, and incorporated herein by reference, summarize the EIR’s determinations regarding Project impacts before and after mitigation. Having reviewed the EIR and the SAFCA Findings, the Central Valley Flood Protection Board makes its findings as follows:

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a. The Central Valley Flood Protection Board finds that the project may have the following significant, unavoidable impacts, as more fully described in the EIR and the SAFCA Findings:

- A. Conversion of Important Farmland to Nonagricultural Uses
- B. Potential Construction Impacts on Known Prehistoric Resources
- C. Damage to or Destruction of Previously Undiscovered Cultural Resources
- D. Discovery of Human Remains during Construction
- E. Temporary Increase in Traffic on Local Roadways during Construction
- F. Temporary Emissions of ROG, NOx and PM10 during Construction
- G. Generation of Short-Term Construction Noise
- H. Exposure of Sensitive Receptors to or Generation of Excessive Groundborne Vibration or Noise
- I. Exposure of Residents to Increased Traffic Noise Levels from Hauling Activities
- J. Changes in Scenic Vistas, Scenic Resources, and Existing Visual Character of the Project Area
- K. Cumulative Impact, Agricultural Resources
- L. Cumulative Impact, Cultural Resources
- M. Cumulative Impact, Air Quality
- N. Cumulative Impact, Noise
- O. Cumulative Impact, Visual Resources

The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA Findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. The Central Valley Flood Protection Board finds that the project may have the following significant impacts:

- A. Potential Temporary, Short-term Construction-Related Erosion
- B. Alteration of Local Drainage
- C. Effects on Water Quality from Groundwater Discharged by Relief Wells
- D. Loss of Fish Habitat Through Increased Sedimentation and Turbidity or Releases of Contaminants
- E. Loss of Fish Habitat Through Increased Sedimentation and Turbidity or Releases of Contaminants
- F. Loss of Shaded Riverine Aquatic Habitat Associated with Levee Improvement Activities
- G. Loss of Sensitive Habitats
- H. Disturbance and Loss of Special-Status Plant Habitat

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- I. Loss of Potential Habitat for Valley Elderberry Longhorn Beetles
- J. Disturbance and Loss of Giant Garter Snake Habitat
- K. Disturbance and Loss of Northwestern Pond Turtle Habitat
- L. Loss of Swainson's Hawk Habitat and Potential Disturbance of Nests
- M. Loss and Potential Disturbance of Habitat for Other Special-Status Birds
- N. Loss and/or Disturbance of Wildlife Corridors
- O. Impacts on the Natomas Basin Habitat Conservation Plan
- P. Changes to Elements of Reclamation District 1000
- Q. Disturbance of Unknown Unique Paleontological Resources during Earthmoving Activities.
- R. Temporary Increase in Traffic Hazards on Local Roadways during Construction.
- S. Temporary Effect on Emergency Service Response Times and Access during Construction
- T. Permanent Encroachment on Parkland along Garden Highway [not actually an impact of the Natomas Cross Canal Project].
- U. Potential Temporary Disruption of Irrigation Supply
- V. Potential Disruption of Utility Service during Construction
- W. Exposure to Hazardous Materials Encountered at Project Sites
- X. Temporary Aircraft Safety Hazards Resulting from Project Construction
- Y. Activities within or near the Airport Critical Zone.
- Z. Potential to Result in Higher Frequency of Collisions between Aircraft and Wildlife at Sacramento International Airport
- AA. Interference with an Adopted Emergency Evacuation Plan
- BB. Exposure to Wildland Fires

The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA Findings, which describe the mitigation measures for each impact in detail. With such mitigation, each of the significant impacts will be reduced to less-than-significant. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures.

7. As a responsible agency, the Central Valley Flood Protection Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the MMRP, and confirmed that SAFCA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. None of the mitigation measures in the MMRP require implementation by the Board directly, although continued implementation of the MMRP shall be made a condition of issuance of the Encroachment Permit. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063

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8. **Alternatives.** As a responsible agency, the Central Valley Flood Protection Board has responsibility for considering only alternatives which would reduce or avoid impacts of those parts of the Project which it decides to carry out, finance, or approve. The EIR considered four alternatives to the proposed project and SAFCA found them all to be infeasible. The Board concurs with this finding, for the reasons given by SAFCA. The Board finds that there are no feasible alternatives within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.

9. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in application No. 18159-2, against its significant and unavoidable impacts, listed in paragraph 6 (a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered “acceptable”.

The Central Valley Flood Protection Board finds that there is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and \$10 billion in damageable property. The area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. Depending on the circumstances, flood depths in the Natomas Basin could reach life-threatening levels. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, interstate and state highways, and rail service.

The U.S. Army Corps of Engineers, on January 15, 2008, released its Investigation Results concluding that the Natomas Levees are not certifiable for the 3% or 33-year flood event. The USACE release stated: “We're not saying that we expect levee failure during a 3% or greater event, but we are saying that the risk of failure is unacceptable at this time.”

The health and safety benefits of the project, which would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property and threat to residents of the area, outweigh the remaining unavoidable environmental impacts.

Findings pursuant to Water Code section 8610.5

10. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including the Application, the Staff Report and all of the attachments to the Staff Report, the Natomas Levee Improvement Program Landside Improvements Project EIR, the MMRP, the SAFCA Findings, the Corps of Engineers’ Investigation Results on the Natomas Levees, the transcript of the Reclamation Board meeting on December 21, 2007 and the presentations made at the Central Valley Flood

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Protection Board meeting on January 18, 2008, all the letters and other correspondence received by the Board in this matter, and all items in the Board's file on this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Control Board.

11. Best Available Science. In making its findings, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts and the computed water surface profiles, SAFCA used the UNET one-dimensional unsteady flow model developed by the USACE for the Sacramento-San Joaquin Comprehensive Study. The model is considered by many experts as one of the best available scientific tools for the purpose of modeling river hydraulics, including flood control system simulations and water surface profile computations.

12. Effects on State Plan of Flood Control. The Board finds that the direct hydraulic impacts of the proposed Natomas Cross Canal Phase II Improvements, as computed using the UNET model, on the entire State Plan of Flood Control, as set forth in the Staff Report on pages 12-13, are not significant. This includes levee strengthening by cutoff wall, and both waterside and landside fill improvements.

In California Statutes of 2007, Chapter 641 (SB276), the Legislature found and declared that "The projects authorized in Section 12670.14 of the Water Code [which includes the Natomas Cross Canal work] will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Reclamation Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands."

Approval of encroachment permits and federal 33 USC Section 408 requests to alter the flood control project to increase the design level of flood protection (from the 1957 to a 100-year or 200-year level) may result in some degree of associated or shifted flood risks to other basins in the SRFCP. The Board encourages DWR and Board staff, along with their federal and local flood protection partners, to develop and incorporate methodology to evaluate the impacts of these risks and to propose corrective measures when necessary in a comprehensive system-wide manner during the development of a new Central Valley Flood Protection Plan and State Plan of Flood Control to be completed by January 1, 2012.

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13. **Effects of reasonably projected future events.** The impact of climate change on future hydrology and floodplain conditions is discussed in the Draft EIR at pages 3.11-12 to 3.11-13. An increase in precipitation due to climate change “could lead to increased potential for floods because water that would normally be held in the Sierra Nevada until spring could flow into the Central Valley concurrently with winter storm events” thus placing more pressure on California’s levee/flood control system. The impact of greenhouse gases is acknowledged and discussed in the DEIR in Section 4.2.5.6 at page 4-18. Proposed development projects in the Natomas Basin are discussed beginning on page 4-11 of the DEIR. In addition, the DEIR discusses the Master Plan for the Sacramento International Airport., beginning on page 4-9 of the DEIR. Thus, improved levees will not only benefit existing residents, they will permit additional planned development, and airport expansion.

Other Findings/Conclusions regarding Issuance of the Permit.

14. Based on the foregoing, and particularly on the evidence that the condition of the existing Natomas levees poses an unacceptable risk to life and property, the Board finds and concludes that the issuance of the Encroachment Permit No 18159-2 for the Natomas Cross Channel Phase II Improvements is in the public interest.

15. This resolution shall constitute the written decision of the Central Valley Flood Control Board in the matter of Permit No. 18159-2.

Approval of Permit.

16. Based on the foregoing, the Central Valley Flood Control Board hereby approves issuance of an Encroachment Permit in substantially the form attached as Attachment 1 of the Staff Report, and attached hereto as Exhibit A, and subject to the following additional condition:

The mitigation measures approved by the permittee and found in its Mitigation and Monitoring Reporting Plan (MMRP) are made a condition of this permit. The permittee shall implement all such mitigation measures. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063 with advance notice of the proposed changes and submittal of supporting documentation for review and comment to the Staff Environmental Scientist of the Central Valley Flood Protection Board.

17. The Board directs the Executive Officer to take the necessary actions to prepare and execute the permit and to prepare and file a Notice of Determination under

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the California Environmental Quality Act for the Natomas Levee Improvement Program,
Landside Improvements Project, Natomas Cross Canal Phase II Improvements .

DATED: January 18, 2008

THE CENTRAL VALLEY FLOOD
CONTROL BOARD OF THE
STATE OF CALIFORNIA

Benjamin F. Carter, President

Maureen R. Doherty, Secretary